dent or disease. (3) It is not against public policy since (a) suicide is not a crime and (b) public policy is fully as interested in having debts paid, wives and children provided for and contract obligations fulfilled. It may be true that suicide is not technically a crime yet it is equally as hostile to public policy. As to the second contention (b) we do not see how a court can seriously propound it. (4) The argument from the analogy of fire insurance is well met by showing that (a) fire insurance is indemnity, life insurance is not, (b) a fire may never occur, death is certain, and (c) by fire, the culprit himself gains, by death he does not. A gain to others, however, may be as urgent or even more so to the insured than the possibility of gain to himself. The propositions as to an implied contract and as to suicide being reckoned with, would seem to be well covered by the compiling of the mortality tables; the analogy between fire and life insurance is not strong, but the question of public policy is a pointed one, which the New Jersey court does not meet, nor does a satisfactory rebuttal seem possible. Indeed, in the principal case a statute of the state forbade the enforcement of a term in the policy providing for payment in case of a "sane suicide" under certain conditions. As to the exact loss suffered by the insurer by the premature death: this could be easily figured by estimating the period of expectancy of the deceased and reckoning it according to assessments or premiums payable during this period. There is another element, perhaps, that would have to be added, the possibility of the policy lapsing, but that possibility would also seem capable of reckoning.

INSURANCE—REMEDY OF INSURED UPON WRONGFUL CANCELLATION BY THE INSURER.—Plaintiff surrendered his policy in defendant company upon an agreement that a new policy would be issued to him containing certain agreed terms, but after the surrender of the old policy the insurer refused to issue the new policy upon the agreed terms, and also refused to renew the old one. In an action for damages for the wrongful cancellation, *Held,* that the plaintiff could recover the pecuniary loss sustained, that is, the value of the policy at the time of cancellation. *Supreme Lodge Knights of Pythias* v. *Neeley* (1911), — Tex. Civ. App. —, 135 S. W. 1046.

Three remedies are open to the insured when his policy is wrongfully cancelled. He may (1) continue to tender the premiums or assessments as they fall due, and upon the accruing of liability, the amount of the policy, less the premium due with interest, may be recovered; (2) secure re-instatement through an equitable action; (3) bring a suit for damages. In the latter case there has been considerable conflict as to what damages are recoverable. One line of decisions holds that since the insurer is at fault, the insured should be allowed to recover all the premiums with interest. Perhaps the leading cases for this proposition are *McKee* v. *Phoenix Ins. Co.*, 28 Mo. 383, 75 Am. Dec. 129, and *Braswell* v. *Am. L. Ins. Co.*, 75 N. C. 8. That the insured has received a real benefit from the fact that he has been insured during the continuance of the policy is not denied. A recovery of all the amount paid with interest denies the company any return for this protection, and hence adds a punitive element to the damages sustained through the mere

breach of contract, which if allowed would seem to be peculiar to insurance. The courts today, even some of those which are committed to this doctrine, do not look favorably upon it, but quite generally favor the doctrine that the present value only of the policy may be recovered. What this present value may be is difficult of ascertainment. The cost of securing a like policy in another company offers a fair test if the plaintiff is still insurable. *Speer* v. *Phoenix Ins. Co.*, 36 Hun. 322. The difference between the amount paid with interest and the costs of carrying the risk was laid down in *People* v. *Security Ins. Co.*, 78 N. Y. 114, 34 Am. Rep. 522. This gives nothing for the loss of the policy itself. The court in the principal case lays down a rule which seems just and equitable as well as capable of general application. The present value is such sum as at a reasonable rate of interest, would equal at the end of the period of expectancy the face of the policy, minus the premiums that would have been paid during this period with interest thereon. If the insured is in ill health the question of premiums may be submitted to a jury assisted by the testimony of insurance experts. The damages recoverable, says the court, are what it would cost to carry the contract into effect, which in all cases of breach is the true measure of damages.

INSURANCE—SUBROGATION IN EMPLOYER'S LIABILITY INSURANCE.—Plaintiff insured a brewing company against any loss occurring under a statute making an employer liable for the death of an employee. Defendant, a machine erecting company employed by the brewing company, negligently caused the death of an employee. Plaintiff, the insurer, paid the loss which the brewing company incurred by reason of its statutory employer's liability for such death and now seeks to be subrogated to the brewing company's right to recover for the loss occasioned by defendant's negligence. *Held*, that the insurance contract is one of indemnity and that the insurer is entitled to be subrogated to the rights and claims of the brewing company, which rights include a cause of action against the defendant for the loss caused by the negligence of the latter. *Traveler's Ins. Co.* v. *Great Lakes Engineering Works Co.* (1911), — C. C. A., 6th Cir. —, 184 Fed. 426.

It is well settled that an insurer making payment under a life policy is not entitled to be subrogated to any rights as against a tort feasor who may have wrongfully brought about the death of the insured. This rule rests upon the theory that at common law a personal action dies with the person and hence no right of recovery, to which the insurer could claim subrogation, survives the death of the insured. Nor is this rule altered, as far as concerns the insurer, by statutory provisions giving the surviving wife and children a right of recovery for the killing of a man, for such right accrues only to those nominated in the statute and is not subject to subrogation by the insurer. *Mobile Ins. Co.* v. *Brame*, 95 U. S. 754, 24 L. Ed. 580. *Connecticut Mut. L. Ins. Co.* v. *New York & N. H. R. R. Co.*, 25 Conn. 265, 65 Am. Dec. 571. In general when an insurer pays to the insured the amount of the loss, such insurer is subrogated in corresponding amount to the insured's right of action against the person responsible for the loss. 4 COOLEY'S BRIEFS ON THE LAW OF INSURANCE, 3893. *United States Casualty Co.* v. *Bagley*, 129 Mich. 70, 87